

IN THE HIGH COURT OF DELHI

Crl.M.C. No.1713/2004

Vandana Goel Petitioner
! through: Mr. A.K.Das, Advocate

VERSUS

\$ R.K.Srivastava Respondent
^ through: Mr. M.L.Srivastava, Advocate with
Mr. Manish Aggarwal, Advocate &
Ms. Seema Srivastava, Advocate

RESERVED ON: 14.08.2007

% DATE OF DECISION: 17.08.2007

CORAM:

*** Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y
3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

1. Petitioner, arrayed as accused No.2 in a complaint filed by the respondent before the Metropolitan Magistrate prays that summoning order dated 22.8.2001 as also the complaint No. 10/2000 be quashed.
2. It is not in dispute that the complainant i.e. respondent in Cr.M.(C) No. 1713/2004 is a prime accused in CBI

Case No. RC-4 (E)/97/EOW-I under Section 420 read with Section 120-B I.P.C.

3. Charge sheet has been filed by the C.B.I and the learned designated judge has taken cognizance of the same. In a nut shell, gravement of the charge against respondent is that during the period June 1996 to April 1997 he along with other co-accused hatched a criminal with the object to cheat the general public by collecting money through public issue floated by the company M/s. Zed Investment Ltd. That the respondent was a director and for self and as constituted attorney of 3 other directors signed the relevant documents pertaining to the prospectus for the public issue. That the money collected under the public issue was siphoned of by the respondent.

4. In the complaint filed by the respondent he admits being a director of Zed Investment Ltd. and having a role in the public issue of shares of said company but pleads that he was tricked into the same by the petitioner and other persons impleaded as accused/respondents in the complaint. In the complaint, respondent has pleaded as under:-

“4. That accused No.4 who was introduced with complainant's company by one D.P.Srivastav a Director in other concern of the company and has very close racket with other accused described here inafter and started looking after the audit work

beside the employees of PLS Group i.e. R.K.Shukla, Director Accounts of PLS Group. It is worth mentioning that he after preparing balance sheet and other accounts paper got signed by himself or his associate.

5. That Arun Singh being professional C.A. got several companies registered with R.O.C. of PLS Group Companies and won the confidence of complainant by giving professional advice time and again.

6. That some time in May, 1996 accused No.4 induced the complainant to bring a public issue in the market and said that his bossam C.A. Frien who is well known to him, had obtained SEBI approval to bring public issue in his company M/s. Zed Investment which was got registered by them in 1993 and company was in full fledged working with proper account books. Income Tax paid and has acquired a good reputation in the market, accordingly SEBI Authorities have also approved the said company for bringing public issue upto 2 crores or so.

7. That after some time accused No.4 along with Tarun Goel, Vandana Goel and 2-3 other persons came in office of complainant at Lajpat Nagar and introduced as Director of M/s. Mexwell Securities and GEEFCEE etc. they were also introduced as relation or the friend of Tarun Goel. It was further disclosed that it is only Tarun Goel who is conducting entire business for and on behalf of directors or the companies being experienced and qualified professional C.A. With active assistance of his wife.

8. That accused No.1, 3 & 4 placed few bunch of files containing registration of Zed Investment with ROC as Pvt. Ltd. which was later converted into Public Ltd. along with its Memorandum and Article of Association, documents and returns of Income Tax pertaining to years 1994-95, 1995-96, 1996-97 the balance sheet annexed, statement of Bank Account

SEBI Approval documents and correspondence etc. which caused a belief that all genuine transaction has been done by them. Accused No. 1, 3 & 4 further assured that there would be no problem to the complainant and they are capable to handle entire process of public issue and that they will manage the affairs, & stay appointment of Registrar of issue, lead manager and well act done listing business with DSE Authorities. The complainant had only to provide funds against capital shares of Zed Investment which they had to pay other directors, besides day to day expenses in bringing the said public issue.

x x x x x

10. That accused No.1 and 4 in connivance with each other further engaged services of M/s. Alankrit Assignment Ltd. 205-206, Anarkali Market, Jhandewalan Extn. New Delhi-110055, the registered Category-I, Registrar and share transfer agents for which the payments were done by the complainant time to time to them.

“It is worth mentioning that entire conduct of business in bringing the public issue into market at all level was handled by accused No. 1 & 4. The complainant never visited the bank where account of Zed Investment were opened, it was accused No.1, 4 having relation and later being C.A. Of the Rajasthan Bank, Karol Bagh, got opened the account. The CBI also came to the conclusion from its investigation that Tarun Goel Accused No. 1 was himself conducting and managing entire affairs of Zed Investment, the signature of Zille Singh was either being done by him or he was getting signature done from some body else and documents so prepared for ROC, Bank, Income Tax, SEBI, they used as genuine having knowledge that the same are false and forged by them relating to deal of Zed Investment & The public issue.”

x x x x x

12. That accused No.2 the mother of accused No.1 who is also associated in one or the other manner in various companies formed by accused No.1 and had a C/A No. 754 in Dena Bank, Karol Bagh, New Delhi, as proprietor of M/s. Goel and Company and accordingly introduced bogus, non existing persons, namely Zille Singh, Anil Kumar and Neeraj as director of M/s. Zed Investment and got opened C/A No. 5/456 having positive knowledge of her part that there are no persons. She did so with connivance with her son Tarun Goel and daughter-in-law Mrs. Vandana accused No. 1 & 3.

x x x x x

15. That the accused No.5 deliberately and dishonestly permitted to open a bogus Account of M/s. Zed Investment in the Bank without taking photographs and in the presence of accused persons at the time of opening the said bank Account."

5. It is apparent that case of the respondent, in a nutshell, is that he had innocently signed the papers relating to the company Zed Investment Ltd. and that Tarun Goel and his wife Vandana Goel (the petitioners) were the ones who induced him into so doing.

6. In the charge sheet submitted by the CBI, respondent has been shown as the main accused and it has been alleged that during the period June 1996 to April 1997, he along with other co-accused entered into a criminal conspiracy with object to cheat the general public by collecting money through issues of shares. As per charge sheet, the respondent

is alleged to have executed all the documents including operating the bank account of the company. The money collected has to be accounted for.

7. It is thus apparent that the respondent is projecting his defence by and under the complaint.

8. The complaint filed by the respondent has a direct nexus with the CBI case. It cannot be taken cognizance of.

9. Section 319 of the Code of Criminal Procedure 1973 reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then-

(a) The proceedings in respect of such person

shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

10. Thus, at the trial in the CBI case if evidence surfaces against a person not being the accused, the learned trial judge can always proceed against said person.

11. The petition is allowed. The summoning order dated 22.8.2001 and the complaint case No. 10/2000 filed by the respondent is quashed.

August 17, 2007
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PRADEEP NANDRAJOG, J.